

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN - NORTHERN DIVISION

In re: DAVID N. RICKETT
d/b/a DAVE RICKETT CONSTRUCTION, and
MONICA A. RICKETT,

Case No.: 09-21073-dob
Chapter 7
Hon. Daniel S. Opperman

Debtor(s).

DAVID N. RICKETT, and
MONICA A. RICKETT,

Plaintiffs,

A.P. Case No. _____

v

AFNI, INC., and
VERIZON NORTH, INC.,

Defendants.

**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF FOR VIOLATION
OF THE DISCHARGE INJUNCTION ONLY**

NOW COME Plaintiffs, by and through counsel, and state in support of the Complaint:

JURISDICTIONAL ALLEGATIONS

1. Plaintiffs are the debtors in this bankruptcy case whose address is 204 West 13th Street, Mio, MI 48647.
2. Defendant Afni, Inc. is a creditor of plaintiffs. Defendant Afni, Inc. is an Illinois corporation whose resident agent is The Corporation Company, 30600 Telegraph Road, Suite 2345, Bingham Farms, MI 48025.
3. Defendant Verizon North, Inc. is a Wisconsin corporation whose resident agent is The Corporation Company, 30600 Telegraph Road, Bingham Farms, MI 48025.
4. This complaint is being filed as an adversary proceeding pursuant to F.R.Bankcy.P. 7001

because injunctive relief is requested. This is a core proceeding. The Court has jurisdiction over this proceeding because it arises out of a case under the Bankruptcy Code, concerns Debtors' properties related to that case, and it implicates the power and authority of the Bankruptcy Court.

FACTUAL ALLEGATIONS

5. Plaintiffs filed a Chapter 7 case on March 27, 2009. The defendants were listed as general, unsecured creditors on Schedule F and received electronic notice of the bankruptcy and the discharge order.

6. An Order of Discharge was entered on July 17, 2009.

7. Despite the filing of the petition, the defendants sent a demand for payment to the plaintiffs. (Exhibit 1).

CLAIM

Damages and Injunctive Relief for Violation of the Discharge Injunction

8. Under 11 U.S.C. § 105, the plaintiff/debtor has an implied right of action to enforce 11 U.S.C. § 524. 11 U.S.C. § 524(a) provides that an Order of Discharge:

....

(2) Operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover, or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; . .

.

9. Plaintiffs' implied cause of action under 11 U.S.C. § 524 entitles Plaintiffs to equitable relief under 11 U.S.C. § 105.

10. Defendants' attempt to collect the debt is a violation of 11 U.S.C. § 524(a)(2) and also a contempt of the court and entitle Plaintiffs to damages, costs, and attorney fees.

WHEREFORE Plaintiffs request that this Honorable Court make a finding that

Defendants' acts violated 11 U.S.C. § 524(a)(2) and are also a contempt of the court and enter a judgment in the amount of \$1,500.00 against Defendants, jointly and severally, plus costs and attorney fees and request an order enjoining Defendants from any further acts contrary to the Order of Discharge.

August 1, 2010

/s/ Todd H. Nye
Todd H. Nye, P59301
Nye & Associates, P.L.L.C.
Attorney for Plaintiffs
P.O. Box 745
Grayling, MI 49738
(989) 414-2724 tx.
(989) 821-1133 fx.
enotice@nyelaw.org